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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA – SAN DIEGO COURTHOUSE**
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11 MARIO MACIAS; MARIA TERESA
12 MACIAS,

13 Plaintiffs,

14 vs.

15 SPENCER RIVAS PEREZ; SUSAN ARCY;
16 ESTATE OF SUSAN ARCY; FORD
17 MOTOR COMPANY AND DOES 1 THRU
18 500, INCLUSIVE

19 Defendants.

CASE NO. 10cv973-MMA (BGS)

PROTECTIVE ORDER

19 **STIPULATED PROTECTIVE ORDER**

20 In order to preserve and maintain the confidentiality of certain confidential,
21 commercially sensitive and proprietary documents to be produced by FORD MOTOR
22 COMPANY ("Ford") in this action, it is ordered that:

23 1. Documents to be produced by Ford or Plaintiffs in this litigation which
24 contain confidential information shall hereafter be referred to as "Protected Documents."
25 Any document or any information designated as "Subject to Protective Order", or other
26 similar language in accordance with the provisions of this Order, whether identified as
27 "Sharing" or "Non-Sharing", shall only be used, shown or disclosed as provided in this
28 Order.

1 2. As used in this Order, the term “documents” means all written material,
2 videotapes and all other tangible items, produced in whatever format (e.g., hard copy,
3 electronic, digital, etc.) and on whatever media (e.g., hard copy, videotape, computer
4 diskette, CD-ROM, DVD, hard drive or otherwise).

5 3. The burden of proving that a Protected Document contains confidential
6 technical information is on the party producing the document. Prior to designating any
7 material as “Protected”, the producing party must make a bona fide determination that
8 the material is, in fact, a trade secret, confidential technical information or other
9 commercially sensitive information, the dissemination of which would damage the
10 party’s competitive position. If a party disagrees with the “Protected” designation of any
11 document, the party will so notify the producing party in writing. If the parties are unable
12 to agree, within **14 days** of receiving such notice, the parties will follow Chambers’
13 Rules regarding discovery disputes to bring the matter to the Court’s attention. Any
14 document so marked as “Protected” will continue to be treated as such pending
15 determination by the Court as to its confidential status.

16 4. The designation of Protected Documents may be made by marking or
17 placing the notice “Subject to Protective Order” or substantially similar notice, on the
18 document, or, where a copy of the original document is to be produced, on that copy in
19 a location that does not cover or mark over any textual material if possible.

20 5. Protected Documents and any copies thereof received pursuant to
21 paragraph 6 below shall be maintained confidential by the receiving party, his/her
22 attorney, other representatives, and expert witnesses, and shall be used only for
23 preparation for the trial of this matter, subject to the qualifications set forth herein.

24 6. Protected Documents shall be disclosed only to “Qualified Persons.”
25 Qualified Persons are limited to:

- 26 a. Counsel of Record for the parties and the parties. Additional
27 Counsel of Record shall be required to agree and sign this
28 Protective Order before receiving any Protected Documents;

- 1 b. Employees of Counsel of Record involved in the preparation and
2 trial of this action;
- 3 c. Experts and non-attorney consultants retained by the parties for the
4 preparation or trial of this case, provided that no disclosure shall be
5 made to any expert or consultant who is employed by a competitor
6 of Ford;
- 7 d. The Court, the Court's staff, witnesses, and the jury in this case;
8 and,
- 9 e. Attorneys representing Plaintiffs, and the experts and non-attorney
10 consultants retained by such attorneys, in other cases either
11 pending or being investigated against Ford involving a 2004-2008
12 Ford 150 (P221 platform) involving the same allegations asserted
13 in this case, provided that no disclosure shall be made to any
14 expert or consultant who is employed by a competitor of Ford.

15 7. Plaintiffs' Counsel must make reasonable efforts to insure the individuals
16 described in paragraphs 6(b), 6(c) and 6(e) above are "Qualified Persons".

17 8. Before receiving access to any Protected Document or the information
18 contained therein, each person described in paragraphs 6(b), 6(c) and 6(e) above shall
19 execute a "Written Assurance" in the form contained in Exhibit A, attached hereto.
20 Counsel for Plaintiffs shall retain each such executed "Written Assurance" and shall
21 keep a list identifying (a) all persons all persons described in paragraphs 6(b), 6(c) and
22 6(e) above to whom Protected Documents have been disclosed, and (b) all Protected
23 Documents disclosed to such persons. Each such executed written assurance and list
24 shall be submitted to counsel for Ford within thirty (30) days of the disclosure of
25 Protected Documents under this Order and at the termination of this litigation.

26 9. As the Protected Documents may only be distributed to "Qualified
27 Persons," Plaintiffs' Counsel, Defendants' Counsel, and all persons described in
28 paragraph 6 above may not post Protected Documents on any website or internet

1 accessible document repository.

2 10. To the extent that Protected Documents or information obtained therefrom
3 are used in the taking of depositions and/or used as exhibits at trial, or to the extent that
4 deposition testimony is otherwise marked "confidential", such documents, information
5 and/or testimony shall remain subject to the provisions of this Order, along with the
6 transcript pages of the deposition testimony and/or trial testimony dealing with the
7 Protected Documents, information and/or testimony.

8 11. No document shall be filed under seal unless counsel secures a court
9 order allowing the filing of a document under seal. An application to file a document
10 under seal shall be served on opposing counsel, and on the person or entity that has
11 custody and control of the document, if different from opposing counsel. If opposing
12 counsel, or the person or entity who has custody and control of the document, wishes to
13 oppose the application, he/she must contact the chambers of the judge who will rule on
14 the application, to notify the judge's staff that an opposition to the application will be
15 filed.

16 12. All documents that are filed with the Court that contain any portion of any
17 Protected Document or information taken from any Protected Document shall be filed in
18 a sealed envelope or other appropriate sealed container on which shall be endorsed the
19 title of the action to which it pertains, an indication of the nature of the contents of such
20 sealed envelope or other container, the phrase "Subject To Protective Order" and a
21 statement substantially in the following form: "This envelope or container shall not be
22 opened without order of the Court, except by officers of the Court and counsel of record,
23 who, after reviewing the contents, shall return them to the clerk in a sealed envelope or
24 container."

25 13. Any court reporter or transcriber who reports or transcribes testimony in
26 this action shall agree that all "confidential" information designated as such under this
27 Order shall remain "confidential" and shall not be disclosed by them, except pursuant to
28 the terms of this Order, and that any notes or transcriptions of such testimony (and any

1 accompanying exhibits) will be retained by the reporter or delivered to counsel of
2 record.

3 14. Inadvertent or unintentional production of documents or information
4 containing information which should have been designated as "confidential" shall not be
5 deemed a waiver in whole or in part of the party's claims of confidentiality.

6 15. This Protective Order may not be waived, modified, abandoned or
7 terminated, in whole or part, except by Court Order or an instrument in writing signed by
8 the parties. The Court may modify the terms and conditions of the Order for good
9 cause, or in the interest of justice, or on its own order at any time in these proceedings.
10 If any provision of this Protective Order shall be held invalid for any reason whatsoever,
11 the remaining provisions shall not be affected thereby.

12 16. After termination of this litigation, the provisions of this Order shall
13 continue to be binding. This Court retains and shall have jurisdiction over the parties
14 and recipients of the Protected Documents for enforcement of the provisions of this
15 Order following termination of this litigation for a period of **six months**.

16 17. This Protective Order shall be binding upon the parties hereto, upon their
17 attorneys, and upon the parties' and their attorneys' successors, executors, personal
18 representatives, administrators, heirs, legal representatives, assigns, subsidiaries,
19 divisions, employees, agents, independent contractors, or other persons or
20 organizations over which they have control.

21 18. All persons described in paragraph 6 above shall not under any
22 circumstance sell, offer for sale, advertise, or publicize either the Protected Documents
23 and the Confidential information contained therein or the fact that such persons have
24 obtained Ford's Protected Documents and Confidential information.

25 19. Should a party producing documents contend that certain, specific
26 selected documents contain information of a highly sensitive proprietary and/or
27 commercial nature which it desires to produce subject to greater restrictions than
28 provided in paragraph 6, the producing party shall visibly mark such material "Subject to

1 Non-Sharing Protective Order” or other similar designation as “Non-Sharing.” The
2 marking will be made in the document margin so as to not obscure the text of the
3 document in the original or any copies if possible. Documents so marked and
4 information therein may not be disclosed pursuant to paragraph 6(e) above. If a party
5 disagrees that any document so designated should not be entitled to such restrictions,
6 the party will so notify the producing party in writing. The producing party will timely
7 apply to this Court to set a hearing for the purpose of establishing that said information
8 is confidential and that “Non-Sharing” restrictions are justified. Any document so
9 marked as “Non-Sharing” will continue to be treated as such pending determination by
10 the Court as to its confidential status.

11 20. Within ninety (90) days after the conclusion of this case, counsel for the
12 parties who received Protected Documents which are marked “Non-Sharing” or other
13 similar designation as “Non-Sharing” pursuant to paragraph 18 of this Protective Order
14 shall either: (a) return to Ford the Protected Documents, including any documents which
15 any such party disclosed to any person described in paragraphs 6(b) and 6(c) above; or
16 (b) securely destroy the Protected Documents, including any documents which any
17 such party disclosed to any person described in paragraphs 6(b) and 6(c) above, and
18 certify such destruction to Ford.

19 21, Within ninety (90) days after the conclusion of this case, the Court shall
20 securely destroy the Protected Documents. Further, any action by the Court must be
21 preceded by an ex parte motion for an order authorizing the return of all Confidential
22 and Attorneys’ Eyes Only Material to the party that produced the information or the
23 destruction thereof.

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IT IS HEREBY ORDERED THIS 4th DAY OF March, 2011.

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7 **UNITED STATES DISTRICT COURT**
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10 MARIO MACIAS; MARIA TERESA
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15 ESTATE OF SUSAN ARCY; FORD
MOTOR COMPANY AND DOES 1 THRU
500, INCLUSIVE

16 Defendants.
17

CASE NO. 10cv973-MMA (BGS)

(Removed from Imperial County Superior
Court – Case No. ECU05180)

Assigned to: Hon. Michael M. Anello
Department: 5

**EXHIBIT A TO STIPULATED PROTECTIVE
ORDER**

Action File: May 12, 2009

18 **EXHIBIT A**

19 **AFFIDAVIT OF _____**, being

20 duly sworn and personally appearing before the undersigned attesting officer, duly
21 authorized by law to administer oaths, deposes and says that the within statements are
22 true and correct:

23 1. I have read the Stipulated Protective Order attached hereto and I
24 understand its terms and meanings.

25 2. I agree that my signature below submits me to the jurisdiction of the
26 United States District Court, Southern District of California, San Diego Courthouse, in
27 which the action of *Mario Macias, Maria Teresa Macias vs. Spencer Rivas Perez,*
28 *Susan Arcy, Estate of Susan Arcy, Ford Motor Company and Does 1 thru 500,*

1 *inclusive*, is pending, and binds me to the provisions of the Stipulated Protective Order,
2 including to all promises undertaken in the Order, as if originally agreed by me.

3 **FURTHER AFFIANT SAYETH NOT:**

4 This ____ day of _____, 2011.

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7 _____
8 Signature

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11 SUBSCRIBED AND SWORN to before me
12 this ____ day of _____, 2010.

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14 _____
15 NOTARY PUBLIC

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17 My Commission Expires:
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